

SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES

I.

Introduction

The State Personnel Board (Board) proposes to amend sections 83.5, 83.6, and 87 of Title 2, Chapter 1, of the Code of Regulations (CCR). A 45-day public comment period on this rulemaking action was held from November 6, 2020, through December 21, 2020. A public hearing was held on December 22, 2020. The comments received by the Board were taken under submission and considered. A summary of those comments and the Board's responses are below.

II.

Summary of Written Comments from Darci Haesche, Department of Health Care Services (DHCS).

Comment I:

§83.6. Personal Relationship

DHCS recommends broadening the definition of personal relationships to include "current or former domestic partnership" and "any other personal relationship which may adversely affect the ability of a supervisor or manager to fairly and impartially supervise staff".

Response I.

The Board thanks and appreciates DHCS for its feedback to this regulatory package. Based on current California law, domestic partnership does not require that individuals maintain a common residence. (Fam. Code, section 297.) As such, the term "cohabitation" does not address those situations wherein individuals are domestic partners but do not live together. The intent of this regulatory package is to prohibit appointments or promotions based on personal familial relationships rather than merit. It is the Board's view that domestic partnerships constitute a familial relationship that is legally distinct from "marriage" according to state Family Code. (Fam. Code, section 300.) As such, the Board agrees with DHCS's recommendation to include domestic

partnership in the definition of personal relationship.

The Board also agrees that “former” familial relationships such as marriage, domestic partnership, or cohabitation should be included in section 83.6 because they constitute familial relationships that may potentially bias the hiring process or at least create the perception of a biased hiring process. In both instances, the merit civil service system is either harmed or undermined.

However, the addition of any other personal relationship which may adversely affect the ability of a supervisor or manager to fairly and impartially supervise staff lies outside the scope and purpose of these proposed regulations. These regulations were designed to specifically address nepotistic misconduct wherein individuals are appointed or promoted, based on familial relationships rather than merit. Therefore, the Board declines to adopt this recommendation.

Comment II.

§87. Anti-Nepotism

DHCS recommends that departmental anti-nepotism policies also include a definition of nepotism and that their broadened definition of personal relationship as recommended in Comment I is included in departmental anti-nepotism policies.

Response II.

The Board finds DHCS’ first suggestion reasonable and therefore will mandate that appointing powers’ anti-nepotism policies include a definition of nepotism. As discussed in Response I, the Board declines to adopt the broadened definition of personal relationship.

Summary of Written Comments from Anne M. Giese, Chief Counsel, California Attorneys, Service Employees International Union, Local 1000 (SEIU, Local 1000).

Comment III.

§ 83.5. Nepotism

SEIU questions the use of the word “assign” in section 83.5. The intended meaning of assign is unclear without more context or explanation given. SEIU recommends that assign should refer to an appointment or promotion in order to provide more clarity.

Response III.

The Board thanks and appreciates SEIU's feedback to this regulatory package. SEIU's suggestions are reasonable; and therefore, the term "assign" has been removed and replaced with the terms "transfer" and "promote".

Comment IV.

§ 83.6. Personal Relationship

SEIU believes that section 83.6 is too vague to enforce because an appointing power will be unable to determine what degrees of blood associations are prohibited. For example, would the rule prohibit second or third cousins from being employed in the same chain of command? Additionally, SEIU voices concern that the term "association" is equally vague and believes there must be some degrees of direct connection in order for the rule to focus in on the type of linkage that an anti-nepotism policy is attempting to proscribe.

Response IV.

The Board believes that all degrees of blood association fall under the definition of nepotism. Additionally, SEIU's suggested change regarding association is reasonable; and therefore, the term "association" will be amended to the term "related".

Comment V.

§87. Anti-Nepotism

SEIU believes section 87 overlooks the close association of intimate relationships and would potentially ignore the practical reality that persons in these types of intimate relationships are free from any of these restrictions. Thus, these individuals are able to secure advancements for their close personal associates.

Response V.

As SEIU indicated in Comment IV, the term "intimate relationships" is too vague for appointing authorities to enforce. Additionally, while intimate relationships or close friendships are not included in the definition of personal relationships for purposes of nepotism, cronyism is prohibited under general principles of merit. The merit principle

requires that appointments be made on the basis of merit. Conferring an employment benefit on a close friend based on the relationship rather than merit is in direct contravention of the merit principle. Accordingly, the Board declines to make this suggested change.

Robert Marin, representing himself, Employed by the State

Comment VI:

§ 83.6 Personal Relationship

Mr. Marin recommends broadening the definition of personal relationship to include when two state employees who have worked with one another over an extended period of time, and thus created a long-standing working relationship. Mr. Marin's other concern is that individuals will be promoted in place based on their long-standing working relationship rather than merit. For example, a supervisor may promote in place an employee they have enjoyed working with over a more qualified candidate.

Response VI.

Please see Response V.

Conclusion

The Board appreciates the comments and feedback it received regarding this proposed regulation. The modified text with the changes clearly indicated are available to the public as stated in the Notice of Modification to Text of Proposed Regulation.